Supreme Court, U.S.
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No. 90-1126

In The

Supreme Court of the United States

October Term, 1991

BARBARA J. NORMAN, et al.,

Petitioners,

v.

DOROTHY REED, et al.,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Illinois

PETITIONERS' REPLY BRIEF

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THE CONTROVERSIES ARE NOT MOOT

Respondents, Reed, Sutton, Feichter, Ricks and Barrera, alone, again fallaciously argue that the controversies raised and to be resolved herein are moot, after having initially and unsuccessfully relied on the same ground in opposition to the instant petition for a Writ of Certiorari. Respondents, Cook County Officers Electoral Board, its officers and members do not assert this contention. In Petitioners' reply brief to Respondents' brief in opposition to the petition for certiorari, Petitioners set forth why, and urged that the controversies presented herein were not moot. Petitioners perceived that Respondents' mootness argument was rejected when this Court granted the petition. Respondents here again rely on the mootness plea, and Petitioners here again repeat why the controversies presented herein are not moot. There yet remains a dire and desperate need for this Court to resolve these controversies in a published decision for future authority, direction and guidance, for the following reasons:

First: in a 26 page unpublished decision, the Cook County Officers Electoral Board (CCOEB) removed some, and placed other Harold Washington Party (HWP) candidates on the November 6, 1991 Cook County, Illinois general election ballot. On appeal, in an order entered October 12, 1990, the four Illinois Supreme Court Democratic Party Justices reversed the CCOEB decision and removed the HWP and all its candidates from said ballot. The three minority Illinois Supreme Court Republican Party Justices dissented in two written opinions.

The Illinois Supreme court's majority reversal order preliminarily states that the order

> "is entered by a vote of a majority of the court,
>
> WITH AN OPINION TO BE FILED AT A LATER DATE."

The reversal order additionally concludes that

> "AN OPINION WILL LATER BE FILED SETTING FORTH THE REASONS SUPPORTING THIS ORDER."

Each of the three Illinois Supreme Court dissenting Republican Party Justices joined in the two dissenting opinions, in one of which there is stated:

> "These two sections of the case, together support the conclusion that the petitions before this Court do not violate Section 10-5, a position which I WILL EXPLAIN IN DETAIL IN A DISSENT I WILL WRITE TO THE OPINION THE MAJORITY WILL FILE AT A LATER DATE." (emphasis added)

As and of this very moment, August 28, 1991, the Illinois Supreme Court majority has failed to render an opinion in this case. Should this Court dismiss the instant petition as improvidently granted because of mootness, as Respondents would urge, the Illinois Supreme Court majority Democratic Party Justices will then be at liberty to render an opinion reversing the CCOEB's decision in whatever language the majority chooses to use, without review thereof by this Honorable Court.

Second: The Illinois Supreme Court majority Justices reversed the CCOEB's decision and removed the HWP and its candidates from the ballot. This Honorable

Court's orders of October 23 and 25, 1990, however, did not reverse the Illinois Supreme Court majority order; rather, this Court merely stayed the Illinois Supreme Court majority reversal order and reinstated the CCOEB's decision "pending the timely filing and disposition of a petition for a Writ of Certiorari." Absent an opinion by this Court, an Illinois Supreme Court majority subsequent opinion, or its October 12, 1990 reversal order removing the HWP and its candidates from the November 6 ballot will be the final published order and authority on the issues and controversies presented herein, both of which will be contrary to this Honorable Court's October 23 and 25, 1990 orders, as well as this Honorable Court's decisions in *Illinois State Board of Election v. Socialist Party*, 440 U.S. 173 (1979); *Lubin v. Panish*, 415 U.S. 709 (1974); *Moore v. Ogilvie*, 394 U.S. 814 (1969), an unprecedented imbroglio.

A reason proffered for the Illinois Supreme Court majority's unusual neglect to render its majority opinion is that no majority opinion can now be written. Two of the four Illinois Supreme Court majority Democratic Party Justices, Justices Daniel Ward and John Stamos, who joined in the Court's October 12, 1990 reversal order, are no longer members of the Illinois Supreme Court. They retired from the Court on December 6, 1990, without having joined in or ratified a majority opinion. They have been replaced by Justices Michael A. Bilandic and Charles A. Freeman, neither of whom were members of the Court on October 12, 1990 when the Court's majority reversal order was entered. Under these circumstances, should this Honorable Court dismiss the instant proceedings because of mootness, or on any other ground, the

Illinois Supreme Court majority reversal order of October 12, 1990 will be the final published judicial authority on the instant issues and controversies for future guidance and direction, again, a most undesired and unprecedented dilemma.

Third: under the provisions of the Illinois Election Code, Ch. 46, Secs. 10-8 and 10-10.1, Ill. Rev. Statute, the nominee-candidates are the only parties who may appear before the CCOEB on the hearing of the objections to the nominating petitions to remove the nominee-candidates from the ballot, or before any appellate tribunal on the appeal of any CCOEB ruling. Because these election code provisions precluded the appearances or the participation of the HWP and/or the HWP voting supporters in the proceedings before the CCOEB, or on the appeal of the CCOEB decision before the reviewing Circuit Court of Cook County or the Illinois Supreme Court, in an attempt to protect their constitutional rights and interest, six (6) HWP voting supporters filed an action under 42 USC Sec. 1983 in the United States District Court for the Northern District of Illinois, the Honorable John Nordberg presiding, to enjoin the removal of the HWP and its nominee-candidates from the November 6, 1990 ballot, entitled *Timuel Black, et al. v. Cook County Officers Electoral Board, et al.*, 90 C 5529. On October 2, 1990, the District Court, in an opinion to be published, dismissed the HWP Plaintiffs' complaint on the ground that it lacked jurisdiction. However, after ruling that it lacked jurisdiction and that the complaint should be (and was) therefore dismissed, District Judge Nordberg ironically proceeded further and gratuitously decided "that the [25,000 Cook County suburban voters'] signature requirement [on nominating

petitions for suburban Cook County Board members] is not unconstitutional as it applies to the separate components which comprise Cook County."

This District Court decision is clearly erroneous, repugnant to and violative of this Court's decisions in *Illinois State Board of Election v. Socialist Workers' Party*, 440 U.S. 173 (1979); *Lubin v. Panish*, 415 U.S. 709 (1974); *Moore v. Ogilvie*, 394 U.S. 814 (1969). The District Court's laborious convolusions to distinguish these decisions were futile.

This District Court decision was rendered 10 days before the Illinois Supreme Court's October 12, 1990 majority and dissenting opinions, to be reviewed herein, and 23 days prior to this Court's October 25, 1990 order restoring the HWP and its candidates to the November 6, 1990 ballot. Additionally, this District Court's unprecedented decision is diametrically opposed to the dissents of the three dissenting Illinois Supreme Court Justices. This erroneous District Court decision will be a published authoritative decision on this issue should this Court dismiss the instant proceedings as moot. The HWP Plaintiffs appealed the District Court's decision and dismissal of their complaint to the United States Court of Appeals for the Seventh Circuit, Docket No. 90-3203, *Black, et al., Appellants v. CCOEB, Appellees, and Reed, et al., Intervening Appellees*. The Court of Appeals on January 18, 1991 ordered that the appeal be held in abeyance pending rendition of this Honorable Court's decision herein.

Fourth: the Chicago-Cook County Democratic Party power structure continues to deny the HWP equal treatment under the election laws, which necessitated the

HWP to file an action in the United States District Court for the Northern District of Illinois to compel the Chicago Election Board to appoint HWP election judges, as it had appointed Republican and Democratic Party election judges for the polling places in the April 2, 1991 Chicago mayoral election. This action was entitled, the *HWP, et al. vs. the Chicago Board of Election Commissioners, et al.*, No. 91 C 1727, the Honorable John Nordberg again presiding. Even though its was unchallenged that the HWP was the second largest Chicago political party and that city Republican Party election judges had been appointed for the much smaller Republican Party, District Judge Nordberg again denied relief to the HWP. An appeal from this denial is now pending in the United States Court of Appeals for the Seventh Circuit, Docket No. 91-1686, Appellants' brief due on or before September 2, 1991, Appellees' brief due on or before October 2, 1991 and Appellants' reply brief due on or before October 16, 1991. A published decision resolving the issues and controversies herein by this Honorable Court will most assuredly impact on this appeal before the Seventh Circuit.

The issues and controversies herein indeed are not moot. The bench, bar, political parties and the public desperately desire and need a definitive published opinion from this Court resolving these issues, as judicial authority for future guidance and direction.

II

THERE IS ONLY ONE HAROLD WASHINGTON PARTY

There is only one Harold Washington Party (HWP). The Respondents' contrary assertions, that there are two

HWP, i.e., a "Timothy Evans HWP" and a "R. Eugene Pincham HWP", are (1) deliberate misstatements, (2) without any support whatever, in any record, in any proceeding, before any tribunal below, (3) are diametrically opposed to the uncontradicted and undisputed testimony presented to, and the findings of the Cook County Officers Electoral Board (CCOEB), set forth in argument No. II, pages 31-37 of Petitioners' Brief.

III.

THE STATUTORY 25,000 SUBURBAN COOK COUNTY VOTERS' SIGNATURE REQUIREMENT IS UNCONSTITUTIONAL

Without in any way intending to be presumptuous, we respectfully submit that Petitioners' and the Amicus Curiae Briefs adequately and accurately respond to and rebut Respondents' blatantly erroneous argument that the statutory 25,000 suburban Cook County voters' signature requirement is constitutionally valid.

CONCLUSION

Petitioners pray reversal of the decisions of the CCOEB and the four majority Illinois Supreme Court Justices that Section 10-2, Chapter 46, Illinois Election Code, Ill. Rev. Stat. 1989, required the HWP nominating petitions for suburban Cook County Board Commissioners to contain 25,000 suburban Cook County voters' signatures, and removing the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot.

Respectfully submitted,

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